

California Regional Water Quality Control Board
Santa Ana Region

September 17, 2004

ITEM: 10

SUBJECT: Appeal of Staff's Denial of an Exemption from the Minimum Lot Size Requirement for Subsurface Disposal System Use – Tom Apostle, 26345 Crestview Drive, Idyllwild, Riverside County, APN 565-191-011

DISCUSSION:

On July 27, 2004, Jim Irvin, Acting Agent on behalf of Mr. Apostle, contacted staff requesting approval for the use of a second septic tank-subsurface disposal system at the above-referenced site. Mr. Apostle owns a 3-bedroom, 1.5-bath house located at the site. An existing subsurface disposal system is utilized for the discharge of sanitary wastes from the house. The property is just over one-half acre in size (25,215-sq. ft. or 0.51 acre net). This area of the County is unsewered and on-site septic tank-subsurface disposal systems are utilized for disposal of sanitary wastes.

Mr. Apostle proposes to construct an additional 240 sq ft. dwelling for a weekend guesthouse (see attached drawing). The new dwelling would be located adjacent to the rear property line. Mr. Apostle proposes to install an individual 750-gallon septic tank-subsurface disposal system to serve the second dwelling.

On October 13, 1989, the Regional Board adopted a Basin Plan amendment that requires new developments for which on-site subsurface disposal system use is proposed to have a minimum of one-half acre of land per dwelling unit. The Board found that it was necessary to limit the density of new subsurface disposal systems to control the nitrate quality problems found in the groundwaters of the Region.

In adopting the minimum lot size requirements (MLSRs), the Board recognized that it was appropriate to distinguish between “existing” developments using subsurface disposal systems, (i.e., those already in place or approved at the time the MLSRs were adopted), and “new” developments. Thus, the Board specifically exempted from the one-half acre requirement existing developments where septic tank-subsurface disposal systems had been installed by September 7, 1989 or for which conditional approval (e.g. conditional use permit, or conditional approval of tentative parcel or tract map) had been obtained by that date. The one-half acre requirement applies only to “new” developments.

In adopting the MLSRs, the Board also recognized that there would likely be proposals for additions to existing developments that would result in increased wastewater flow. The Board's MLSRs addressed these circumstances. Additions to existing dwellings (bedrooms/baths) are exempt from the MLSRs, if the existing septic system could accommodate the resultant

additional wastewater flows. However, the MLSRs state that any proposal to add any freestanding structures that would result in additional wastewater flows must be considered a “new” development, to which the minimum lot size requirement applies. The proposed additional dwelling would be a freestanding structure. As such, the project as a whole (the existing house and additional dwelling) must be considered a “new” development and the one-half acre minimum lot size requirement would apply. To satisfy the MLSRs, the existing house and the proposed new dwelling would each require one half-acre minimum lot size. As Mr. Apostle’s lot is just over one-half acre in size (0.51), staff was required to deny his request for a clearance for the project.

The intent of distinguishing between additions that are attached to existing dwellings and freestanding structures was to guard against the use of the freestanding structure as a second single-family residence on the property. The purpose of the new dwelling is a weekend guesthouse.

On August 25, 2004, Jeff Johnson, Riverside County Environmental Health, contacted Board staff and advised that Mr. Apostle’s alleged proposed guesthouse has already been constructed and a second septic system was installed without the required permits. Mr. Johnson also advised staff that a notice of violation has been issued to Mr. Apostle requiring he obtain Regional Board approval for the use of the second subsurface disposal system. Mr. Apostle is now confronted with the need to satisfy County requirements.

Board staff has advised Mr. Apostle of another option identified in the Board’s exemption criteria, which allows project proponents to implement an acceptable offset. Mr. Apostle’s second home (guesthouse) could remain if he connected another septic system (that would not otherwise be required to be connected to the sewer) to the sewer.

RECOMMENDATION:

Deny Mr. Apostle’s request for an exemption from the minimum lot size requirements for the use of a second septic system and encourage him to locate an acceptable offset so his project could remain.

Comments were solicited from the following agencies:

State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
Riverside County Environmental Health, Palm Desert – Jeff Johnson
Riverside County Building and Safety, Palm Desert
Jim Irvin